IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.2.2007.

CORAM

THE HON'BLE MR.JUSTICE M.JEYAPAUL

W.P.No.10807 of 1998

1. Regina Bai
2. K.B.Jaya — Petitioners

vs.

1. The Managing of NAFED
   (Processed Foods),
   40, Katpadi Road,
   Vellore.

2. Presiding Officer,
   Labour Court,
   Vellore. — Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus for the relief stated therein.

For petitioner : Mr.N.G.R.Prasad, Senior Counsel for
M/s.Row & Reddy

For R1 : Mrs.S.Vijayadharani

ORDER

The petition is filed seeking issuance of a writ in the nature of certiorarified mandamus to call for the records relating to the award of the second respondent in I.D.No.424 and 425 of 1993 dated 24.12.1997 and quash the same and consequently direct the first respondent to reinstate him in service with backwages and continuity of service and other attendant benefits.

2. The first petitioner herein was the petitioner in I.D.No.424 of 1993 and the second petitioner herein was the petitioner in I.D.No.425 of 1993 preferred before the Labour Court, Vellore seeking reinstatement with full backwages and all other attendant benefits.

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3. The Labour Court, having considered the evidence of the first petitioner herein in the background of Exs.WW1 to WW3 produced on the side of the petitioners and Exs.M1 to M20 exhibited on the side of the Management, has passed an award dismissing the claim of the petitioners herein. The Labour Court has observed that the petitioners have failed to produce any independent evidence or documentary proof to establish that they had been in service under the respondent prior to 1.6.1984. Though the respondent-Management has not produced PF Register, Bonus Register and Wage Register as directed by the Court, it was the bounden duty of the petitioners to produce the documents available with them to establish their case that they had been in service for quite a long time prior to 1.6.1984. As the petitioners have served only for four months and not 240 days continuously in a period of one year prior to the date of termination of their service, section 25F of the Industrial Disputes Act will not be attracted. Further, the Labour Court has commented upon the delay and laches in approaching the Labour Court after a period of six years from the date of termination of their service. Ultimately, the Labour Court chose to pass an award dismissing the petitions filed by the petitioners.

4. The points that arise for consideration in the writ petition are
(1) Whether the petitioners have put in 240 days of service in a continuous period of one year prior to their termination on 1.10.1984.
(2) Whether the respondent-Management has complied with the mandates of section 25F of the Industrial Disputes Act.
(3) Whether the petitioners are entitled to reinstatement with backwages and other attendant benefits.

5. Points 1 to 3:-
Learned counsel for the petitioners would strenuously submit that the respondent had not cared to produce the vital documents viz., PF Register, Bonus Register and Wage Register maintained by the respondent in respect of the service of the petitioners for the period from 1981 to 1984 inspite of specific orders passed by the Labour Court in I.A.No.707 of 1994. The illiterate petitioners have categorically stated in the correspondence with the management that they had put in 12 years of past service. Inasmuch as the respondents have not complied with the directions of the court to produce the relevant documents from their custody, an adverse inference will have to be drawn as against the management. The laches, if any, on the part of the petitioners in approaching the Labour Court cannot at all be a ground to reject their claim if at all their claim is legally sustainable. Admittedly, retrenchment compensation equivalent to 15 days average pay for every completed year of service as per section 25F(b) of the Industrial Disputes Act was not paid at the time of terminating the service of the petitioners and therefore, the order of termination itself is illegal and is liable to be quashed.

6. Learned counsel for the respondent-Management would contend that the petitioners have chosen to knock at the doors of the Labour Court only after a lapse of about six long years. The delay and the laches on the

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part of the petitioners would disentitle the claim made by the petitioners. The respondent management has produced all the documents available in their custody. The settled position is that it is only the employee, who comes forward with a plea that he or she has been in service for a particular period of time, has to establish that he or she has been in continuous service under the employer. No duty is cast upon the Management to produce any document to establish the case of the petitioners. Even otherwise, the documents sought for by the petitioner and directed by the Labour Court to be produced are not at all in the custody of the Management. As the petitioners have been in service right from 5.6.1984 to 1.10.1984 for about a period of four months, the mandates of section 25F(b) of the Industrial Disputes Act, 1947 does not come into operation. Therefore, the learned counsel for the respondent-Management would submit that the claim of the writ petitioners based on imaginary contentions that they had been in service for quite a long time prior to their termination of service without any basis is liable to be rejected.

7. It is true that the petitioners could not produce any documentary proof to establish that they have been in service for about 12 years prior to 5.6.1984, the date of their appointment as Grade II worker on consolidated wage of Rs.312/= per month with effect from 1.6.1984. But, the letters emanated from the petitioners to the Management marked as WW2 and 3 series would go to show that the petitioners have been demanding reinstatement of service on their termination on the specific plea that they had been in service for about 12 long years prior to the order of appointment issued to them on 5.6.1984. No employee would have ventured to address the Management to consider his or her past service, if at all he or she had not put in no such service prior to the appointment on consolidated pay. Such a stand of the petitioners was not denied by the respondent-Management in the counter filed before the Labour Court. The respondent has simply stated that the employee was appointed on a temporary basis on a consolidated pay right from 1.6.1984 as per the orders passed on 5.6.1984. But, there is no specific denial as to the allegation found in the petition filed before the Labour Court by the petitioners that they had put in 12 years of service prior to the order of termination.

8. The order of appointment had been issued to the petitioners on 5.6.1984, but, the order had been given retrospective effect from 1.6.1984. If at all the petitioners had not put in service prior to the date of order of appointment, the Management would not have issued an order of appointment on a particular date giving retrospective effect to the order of appointment.

9. The petitioners are found to be not completely literate persons. They have been appointed only as workers under the respondent-Management. We cannot expect such workers to maintain all the records emanated from the Management. It is quite probable that they would not have expected such a situation in a future date.

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10. Here is a case where the Labour Court, having entertained a petition filed by the petitioners herein gave a specific direction to the respondent-Management to produce the PF Register, Bonus Register and Wage Register maintained by them for the period from 1981 to 1984. The respondent-Management has not chosen to produce those documents in compliance of the order passed by the Labour Court. No oral evidence also was let in on the side of the respondent-Management to putforth their plea that those documents were not available with them. But, on the side of the petitioners, the first petitioner has been examined before the Labour Court. In the absence of production of documents directed to be produced before the Labour Court and also in the absence of any oral evidence on the side of the Management, the evidence of the first petitioner will have to be given much credence.

11. The Honourable Supreme Court in RANGE FOREST OFFICER v. S.T.HADIMANI ((2002) 3 SCC 25) has observed that it is the claimant who makes a claim that he had worked for more than 240 days in a year preceding his termination has to lead evidence to show that he had so worked. It has been further held that if no proof of receipt of salary or wages for 240 days was produced by the workman, he cannot allege that the termination had been issued without giving retrenchment compensation. In the case in SURENDRANAGAR DISTRICT PANCHAYAT v. D.AMARSINGH (2000 (4) LLN 1007) also the Honourable Supreme Court has held that the burden lies on the workman to establish that he had actually worked for more than 240 days during the period of 12 calendar months preceding the date of termination.

12. This Court in MANAGEMENT OF AGRICULTURAL RESEARCH STATION v. CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY ACT AND OTHERS (2003-II-LLJ 110), distinguishing the authority pronounced by the Honourable Supreme Court in the afore- referred Hadimani's case has held at para 8 of the judgment as follows:-

> " Secondly, unlike the Hadimani's case, here a specific effort has been made on behalf of the respondent employees by giving notice to the Management to produce the relevant documents. It has to be borne in mind that the respondent-employees here were illiterate workmen. Their major part of life was spent in working as casual workers in the petitioner institute. It was only in the evening of their career for the last five or six years that they came to be regularised. It is very difficult to expect that such employees would be able to produce any documentary proof as is being required by the learned counsel for the petitioner. The respondent-employee cannot be blamed because they had issued a notice to the petitioner institute to produce the relevant records and, in fact, it was an admitted position that the petitioner institute had maintained the records regarding the attendance as well as the distribution of wages, etc. to the respondent-

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> employees. If for some fanciful reasons the petitioner institute chooses to destroy all the records then, there would be no question of finding any fault with the poor labourers. Beyond this they could not have done anything. The situation would be more grim particularly because these labourers who are obviously illiterate and living in the hand to mouth situation were admittedly only casual workers for a very long time. Under such circumstances, to expect them to come out with documentary proof for their having worked more than 240 days in a year or that they worked for more than thirty-two years would be too much to expect."

13. We cannot expect a poor labourer on daily wages to maintain the documents which came into existence during their service. In the case on hand, though a specific direction has been issued to the respondent-Management to produce those documents, there was no positive response from the respondent-Management for such an order flowed from the Labour Court. It is not the case of the respondent that those documents were destroyed. The supine indifference shown by the Management to the direction issued by the Labour Court to produce the relevant documents to clinch the issue arisen in this case distinguishes the instant case from the facts and circumstances of Hadimani's case dealt by the Honourable Supreme Court. The best evidence available with the respondent-Management should have been, in all fairness, produced by them. As they have not evinced any interest to abide by the directions of the Labour Court, an adverse inference will have to be drawn against the respondent-Management to the effect that they had burked those relevant documents as they would reflect that the petitioners had been in service atleast from 1981 long on daily wage basis prior to the termination of service.

14. It is found that the petitioners have sought for production of the PF Register, Bonus Register and Wage Register only from the year 1981 to 1984. Even if those documents sought for have been produced by the Management, there would have been no proof for the petitioners that they have been in service prior to 1981. No adverse inference can be drawn as against the Management as far as the alleged service of the petitioner prior to 1981. Therefore, I come to the decision that the petitioners have been in service right from 1.1.1981 till their termination on 1.10.1984.

15. It is not a case where the petitioners have been appointed for the execution of a specific assignment. Termination of the petitioners had not taken place for non renewal of the contract between the employer and the workman.

16. The petitioners have approached the Labour Court only on 19.11.1990. So, there is a delay of about six long years on the part of the petitioners to approach the Labour Court seeking appropriate remedies.

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It is a well settled position of law that the delay or laches on the part of the workman to approach the court will not knock away the statutory remedy available to him. He has only courted disentitlement to backwages for the said period. Therefore, for the period of 6 long years right from 1.10.1984 to 19.11.1990, the petitioners are not entitled to the backwages.

17. As it is established that retrenchment compensation had not been given at the time of terminating the petitioners as per section 25F(b) of the Industrial Disputes Act, 1947, the order of termination under challenge is quashed and the respondent-Management is directed to reinstate the petitioners in service and pay the backwages and other benefits right from 19.11.1990, the date on which the petitioners have made a claim before the Labour Court. It is now reported by the learned counsel for the respondent-Management that the respondent's factory itself was closed from 6.2.1995. It is made clear that in case the services of the petitioners are terminated as on 6.2.1995 on account of closure of the factory, their past services from 1.1.1981 to 1.10.1984 and 19.11.1990 to 6.2.1995 shall be taken into consideration for the purpose of calculating the retrenchment compensation. Accordingly,, the writ petition stands allowed. No cost.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

To

The Presiding Officer,
Labour Court,
Vellore.

+ 1 CC To Mr. S.Vijayadharani, Advocate SR NO.10862

+ 1 CC To M/s.Row and Reddy, Advocate SR NO.10817

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